

No. 83-1732

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In the Supreme Court of the United States

OCTOBER TERM, 1984

BETTY C. PHILLIPS, PETITIONER

v.

T.V.A. ENGINEERING ASSOCIATION, INC., ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT*

MEMORANDUM FOR THE UNITED STATES
AS AMICUS CURIAE

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INTEREST OF THE UNITED STATES

Petitioner challenges the constitutionality of 28 U.S.C. 636(c), which authorizes district court judges, acting with the consent of the parties, to refer civil cases to federal magistrates for trial and entry of judgment. The United States has an interest in defending the constitutionality of an Act of Congress,¹ and in numerous cases in the courts of appeals and two cases in this Court, the United States is a party defending the constitutionality of 28 U.S.C. 636(c). *E.g., Foreman v. Collins*, petition for cert. pending, No.

¹28 U.S.C. 2403 authorizes the United States to intervene in actions in the courts of the United States in which the constitutionality of an Act of Congress affecting the public interest is drawn into question, for the purpose of defending the constitutionality of the statute. We wish to reserve the right to intervene in this action if the Court should grant the petition.

83-1616; *Pacemaker Diagnostic Clinic of America, Inc. v. Instromedix, Inc.*, petition for cert. pending, No. 83-1873; *Lehman Bros. Kuhn Loeb, Inc. v. Clark Oil & Refining Corp.*, No. 83-1874 (8th Cir. July 11, 1984) (en banc); *Goldstein v. Kelleher*, 728 F.2d 32 (1st Cir. 1984); *Wharton-Thomas v. United States*, 721 F.2d 922 (3d Cir. 1983); *Gairola v. Virginia*, appeal pending, No. 84-1251 (4th Cir.).

DISCUSSION

Petitioner brought this action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, in the United States District Court for the Eastern District of Tennessee. Both parties executed a form consenting to the trial of the case before a magistrate, and the district court referred the case to a magistrate pursuant to 28 U.S.C. 636(c). Pet. App. A11-A12.

The magistrate ruled in favor of respondents (Pet. App. A16-A22), and judgment was entered on the magistrate's order, as Section 636(c) provides (*id.* at A23). Petitioner, not having preserved the right to appeal to the district court, appealed to the court of appeals. See 28 U.S.C. 636(c)(3) and (4). The court of appeals affirmed (Pet. App. A1-A5).

Petitioner now asserts that the judgment against her is void because Section 636(c) is unconstitutional insofar as it authorized a magistrate to try this case and enter judgment. See Pet. 5-8. Petitioner concedes that she did not raise this claim in either court below (Pet. 6). In our Brief in Opposition in *Foreman v. Collins*, petition for cert. pending, No. 83-1616, we have explained why the contention that Section 636(c) violates the Constitution does not merit this Court's review.²

²We have sent a copy of that brief to counsel for petitioner.

For the reasons stated there, it is respectfully submitted that the petition for a writ of certiorari should be denied as to Question 1 of the questions presented.³

REX E. LEE
Solicitor General

JULY 1984

³In Question 2, petitioner asserts that the district court coerced the parties into consenting to the trial of the case before a magistrate (Pet. i, 8-9). In our view, it would be inappropriate for this Court to grant certiorari to resolve this factual question when it has never been raised before a court below.

We express no view on the other questions presented in the petition.